

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of Chantelle Wise To Provide
Family Day Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on March 15, 2013, at the Minnesota Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55021. The OAH record closed upon the conclusion of the hearing on March 15, 2013.

Robert B. Roche, Assistant Ramsey County Attorney, St. Paul, Minnesota, appeared at the hearing as attorney for the Minnesota Department of Human Services (the Department) and the Ramsey County Community Human Services Department (the County). Theodore C. Landwehr, Attorney at Law, Columbia Heights, Minnesota appeared at the hearing as attorney for Chantelle Wise (the Licensee).

STATEMENT OF THE ISSUE

The issue is whether there is reasonable cause to believe that the health, safety or rights of children in Licensee's care are at imminent risk of harm at this time.

The Administrative Law Judge concludes that there is reasonable cause to believe that children in Licensee's care are at imminent risk of harm, and the temporary immediate suspension of Licensee's family child care license should be continued.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Licensee's Program Conditions

1. Licensee has been licensed to provide family child care services for nine years and had done so in her home in St. Paul, Minnesota (the home) until February 8, 2013, when her license was temporarily suspended.¹

2. Licensee provides excellent care to the children enrolled in her program. The parents of seven children registered in Licensee's day care operation have no safety concerns about children being in her care.² In nine years, the only other licensing sanction Licensee received had been one correction order. The Department has no concerns about the direct care to children provided by Licensee.³

3. Licensee's program is available to care for children five days a week, between the hours of 7:00 a.m. and 5:30 p.m.⁴

4. Licensee has three minor children. Her eight-year-old daughter has significant special needs and requires 24 hour care, including three personal care attendants. The child has epilepsy, cerebral palsy, and is severely and multiply delayed in her development. The child is unable to talk, cannot sit up, cannot eat on her own and has acid reflux issues. Her father is Steven Coburn.⁵

5. During day care hours, there is always a personal care attendant in the day care residence. Throughout the workweek during day care hours, there are four to five teachers, two nurses and two PCA's coming and going throughout each day.⁶

6. Licensee's ex-husband, Steven Coburn, regularly visits their daughter and cares for her when he is at Licensee's residence. He occasionally cares for their daughter during day care hours.⁷

7. Prior to Mr. Coburn's active involvement in advocating for additional care for their child, very few PCA hours were made available for her through Ramsey County programs. Mr. Coburn characterizes his advocacy style when interacting with Ramsey County staff as having, "left a trail of people that find my approach to advocacy as despicable." County program staff are fearful of Mr. Coburn and are unwilling to meet with him at Licensee's home to discuss services for Licensee's and Mr. Coburn's special needs daughter.⁸

¹ Testimony of Chantelle Wise and Jennifer Mateer, Family Child Care Licensors for Ramsey County Community Human Services Department.

² Exs. 6 and 7.

³ Test. of C. Wise and J. Mateer.

⁴ Test. of C. Wise.

⁵ Test. of C. Wise.

⁶ Test. of Danita Anderson, licensed Personal Care Attendant.

⁷ *Id.*; Test. of C. Wise and Steven Coburn.

⁸ Test. of J. Mateer.

Mr. Steven Coburn

8. On January 5, 2011, Licensee's ex-husband, Steven Coburn, was living at Licensee's day care residence.⁹ Licensee had not submitted a background study for Mr. Coburn to the Department.¹⁰

9. Mr. Coburn has listed various addresses as his residence, and now considers himself homeless.¹¹ He and Licensee claim that he has physically resided in various other locations before and after 2011.¹²

10. Mr. Coburn has been convicted of various criminal offences since 1995, including but not limited to motor vehicle theft, fleeing a peace officer, aggravated forgery, and receiving stolen property.¹³

11. On August 14, 1995, Mr. Coburn was charged with aiding and abetting aggravated robbery in the first degree, a felony, under Minn. Stat. § 609.245, subd. 1, and pled guilty to and was convicted of simple robbery, a misdemeanor, under Minn. Stat. § 609.24 on October 25, 1995.¹⁴

June 20, 2012 Incident Involving a Handgun

12. Licensee owns a handgun.¹⁵ On June 20, 2012, at 7:12 p.m., a St. Paul police officer was dispatched to Licensee's residence because there was an illegally parked boat present. Mr. Coburn was arguing with the complaining party when the officer arrived. Mr. Coburn had a black bag over his shoulder that contained Licensee's pistol. Mr. Coburn became confrontational with the officer, initially refusing to allow the officer to inspect the bag. Upon inspection, the officer discovered Licensee's pistol. Mr. Coburn was arrested, transported to the Law Enforcement Center and booked for Illegal Transportation of a Firearm, a gross-misdemeanor.¹⁶

13. Subsequently, Mr. Coburn was also charged with Possession of a Pistol/Assault Weapon by an Ineligible Person, in violation of Minn. Stat. § 624.713. The charges are pending at this time and the criminal file is active.¹⁷

14. Licensee's most recent Family Child Care Licensing Checklist, completed by Licensee on November 29, 2010, states that Licensee does not have any firearms and ammunition in her home or on her property.¹⁸

⁹ Ex 5I at page 1 of 4.

¹⁰ Test. of J. Mateer.

¹¹ Test. of S. Coburn; Exs.5 – 5I.

¹² *Id.*; Test. of C. Wise.

¹³ Ex. 5 – 5I.

¹⁴ Ex. 5F at pages 1-6 of 6.

¹⁵ Test. of C. Wise.

¹⁶ Ex. 5H.

¹⁷ Ex. 5I: Test. of S. Coburn.

¹⁸ Ex. 8.

July 25, 2012 Ramsey County Training Session

15. On July 25, 2012, during a County training session on child care, Licensee disclosed to a County social worker that Mr. Coburn helps her with chores around the home and “comes over sometimes to visit his children.” The social worker advised that Mr. Coburn would have to have a background study conducted. Licensee stated, “that wasn’t going to be a conversation she was looking forward to having with him.” Subsequently, the Licensors sent Licensee a background study form for completion by Mr. Coburn.¹⁹

Disqualification of Mr. Coburn

16. The results of the background study on Mr. Coburn revealed his criminal record.²⁰

17. On January 10, 2013, Licensee was sent a letter notifying her of Mr. Coburn’s disqualification from direct contact with or access to children in her day care. Licensee received the letter.²¹

18. On January 10, 2013, Mr. Coburn was sent a disqualification letter to the address he had listed on the Background Study form. He had listed a Minneapolis, Minnesota, address with a St. Paul, Minnesota, zip code. The letter was returned.²²

19. On January 29, 2013, Mr. Coburn was sent another disqualification letter to the address he had listed on the Background Study form, together with the correct zip code. This letter was also returned as “unable to forward.”²³

20. Mr. Coburn has not requested reconsideration of his disqualification.²⁴

Procedural Findings

21. On February 8, 2013, the County family child care licenser, relying on Mr. Coburn’s criminal record, recommended to the Department that Licensee’s family child care license be immediately suspended.²⁵

22. On February 8, 2013 the Department issued an Order of Temporary Immediate Suspension (the Order) of Licensee’s family child care license.²⁶

¹⁹ Test. of C. Wise, C. Wise, and D. Donley.

²⁰ Ex. 5 – 5I.

²¹ Ex. 4: Test. of C. Wise.

²² Ex. 3; Test. of J. Mateer.

²³ Ex. 2: Test. of J. Mateer.

²⁴ Test. of J. Mateer.

²⁵ Ex. 1; Test. of J. Mateer.

²⁶ Ex. B of Notice and Order for Hearing.

23. Licensee filed a timely appeal from the Order of Temporary Immediate Suspension and requested an appeal hearing pursuant to Minn. Stat. § 245A.07, subd. 2a.²⁷

24. On February 12, 2013, the Department executed a Notice of and Order for Hearing, scheduling a contested case hearing for March 15, 2013.²⁸

25. On February 26, 2013, the Administrative Law Judge issued a Protective Order, which was served upon the parties that day.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subds. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. The purpose of family child care licensure statutes and rules is to protect the care, health and safety of children.²⁹

Temporary Immediate Suspension Standards and Reasonable Cause

5. Minn. Stat. § 245A.07, subd. 2. provides, in applicable part:

If the license holder's actions . . . or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.

6. In order to maintain a temporary immediate suspension under Minn. Stat. § 245A.07, subd. 2, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule or the actions of other individuals, poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

7. At hearing, the burden of proof is on the Department to show that reasonable cause exists to believe that the license holder's actions or failure to comply

²⁷ Notice and Order for Hearing.

²⁸ *Id.*

²⁹ Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325.

with applicable law or rule, the actions of another, or the conditions in the program, poses, at the time of the hearing, an imminent risk of harm to the health, safety, or rights of persons served by the program.³⁰

8. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.³¹

Family Child Care Law and Rules Alleged to Have Been Violated

9. Minn. Stat. § 245A.04 regarding **APPLICATION PROCEDURES** provides in relevant part as follows:

Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in chapter 245C.

10. Minn. Stat. § 245C.03 regarding **BACKGROUND STUDY; INDIVIDUALS TO BE STUDIED**, provides in relevant part as follows:

Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a background study on:

. . .

(2) an individual age 13 and over living in the household where the licensed program will be provided; . . .

(6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children . . . receiving services from a program, when the commissioner has reasonable cause; . . .

³⁰ Minn. Stat. 245A.07, subd. 2a.

³¹ *Id.*

11. Minn. Stat. § 245C.14, regarding **DISQUALIFICATIONS**, provides in applicable part:

Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder or entity identified in section 245C.03, upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

(1) a conviction of, admission to, or Alford plea to one or more crimes listed in section 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;

12. Minn. Stat. § 245C.15, regarding **DISQUALIFYING CRIMES OR CONDUCT**, provides in applicable part:

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of the level of the offense, the individual has committed any of the following offenses: sections . . . 609.245 (aggravated robbery); . . .

Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: . . . 609.24 (simple robbery). . . .

(b) An individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes. . . .

13. Minn. R. 9502.0375 regarding **REPORTING TO AGENCY**, provides in relevant part as follows:

Subp. 2. Other reporting. The provider shall inform the agency:

A. within 30 days of any change in the regular membership of the household within the day care residence or the addition of an employee who will regularly be providing care;

14. Minn. R. 9502.0435 regarding **SANITATION AND HEALTH** provides in relevant part as follows:

Subp. 5. **Firearms.** All firearms must be unloaded and inaccessible to children. Ammunition and firearms must be stored in separate locked areas.

Disqualified Individual

15. Steven Coburn's conduct involving an aggravated robbery permanently disqualifies him from direct contact with the children in Licensee's day care, pursuant to Minn. Stat. §§ 245C.14 and 245C.15.

16. Steven Coburn's conviction for simple robbery disqualifies him from direct contact with the children in Licensee's day care for 15 years, pursuant to Minn. Stat. §§ 245C.14 and 245C.15.

Violations Found

17. Licensee had a disqualified individual, Mr. Coburn, living in the day care residence on January 5, 2011, without having submitted a background study to the Department, in violation of Minn. Stat. §§ 245A.04 and 245C.03 .

18. Licensee's failure to notify the Department of Mr. Coburn's residence in the day care home is a violation of Minn. R. 9502.0375.

19. Licensee's firearm was not locked in a safe location, inaccessible to children. Licensee's ammunition was not locked in a cabinet separate from a gun safe, in violation of Minn. R. 9502.0435.

Reasonable Cause Conclusions

20. When the Order was issued on February 8, 2013, there were specific articulable facts and circumstances indicating that a permanently disqualified individual, Steven Coburn, was regularly visiting Licensee's home. This provided the Department with a reasonable suspicion to believe that Mr. Coburn had direct access to day care children, thereby placing all of the children in Licensee's care at imminent risk of harm. Those facts and circumstances were unchanged on the date of the hearing.

21. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

22. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

- 1) The temporary immediate suspension of the family day care license of Chantelle Wise be continued; and
- 2) The February 26, 2013 Protective Order of the Administrative Law Judge shall remain in effect.

Dated: March 29, 2013

s/M. Kevin Snell

M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICES

The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, 444 Lafayette Road, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Burden of Proof

During an expedited hearing regarding a temporary immediate suspension, the Commissioner of Human Services is not required to prove that actions by individuals or violations actually occurred. Instead, at this stage, the Commissioner must only present reliable oral testimony and/or reliable documentary evidence sufficient to prove that there is reasonable cause to believe that the health, safety or rights of children in the Licensee's care are at imminent risk. In this type of proceeding "reasonable cause" is defined as the existence of specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that the health, safety or rights of children in the Licensees' care are at imminent risk.³² This is a very modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying charges, facts and circumstances.

The Administrative Law Judge, at this stage of the process, is not required to assess the relative credibility of conflicting testimony, but rather is to determine whether there is enough evidence to maintain the suspension. In this case, there was conflicting testimony regarding certain events, such as whether Mr. Coburn would be present during day care hours. However, the resolution of whether those events occurred is not necessary for the decision in this proceeding.

Licensee's Financial Hardship During the TIS

At this stage of the process, the Administrative Law Judge's singular task is to determine whether there is enough evidence to maintain the suspension by applying the applicable burden of proof. Whether a Licensee suffers financial hardship during a TIS is not relevant to the issue in TIS proceedings. Licensee's obvious financial hardship was not considered by the ALJ in reaching the recommendation required for this report.

Articulable Facts That Establish a Reasonable Suspicion

There is no dispute about the two factual circumstances that are material to the decision in this matter. First, Licensee's ex-husband, Steven Coburn, is a disqualified individual. Disqualified individuals are not allowed to reside in, or be present when day care children are present in, any home where a licensed family child care business is being operated. Licensee's address has recently appeared in Mr. Coburn's criminal records as his home. He did not disclose whether his driver's license lists Licensee's home as his. No reliable documentary evidence suggests that he resides elsewhere. These facts are sufficient to allow a reasonable, prudent person to suspect that Mr. Coburn resides in Licensee's home. Where Mr. Coburn actually resides is a factual determination for a future licensing appeal proceeding, if there is one. The testimony of both Licensee and Mr. Coburn suggest that Mr. Coburn will continue to visit and care for their daughter.

³² Conclusion 7; Laws 2010, Ch. 329, sec. 7.

Second, the fact that Licensee owns a handgun that was not stored legally, previously unknown to the Department prior to the hearing, together with Mr. Coburn's current situation, suggests a level of seriousness that would lead a reasonable, prudent person to suspect that day care children could be exposed to a risk of gunfire in the event of a dispute. The determination of when Licensee purchased the pistol, and whether Licensee can and will store her handgun properly, is not necessary in this proceeding.

Conclusion

The evidence indicates that there remains a reasonable suspicion that there is a risk of imminent harm to children in Licensee's care. Actual harm is not required in these situations. The Administrative Law Judge finds that the Commissioner has reasonable cause to continue the suspension.

M. K. S.